

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

Hector Villafuerte, # 334926,)	
)	Civil Action No.: 9:19-cv-01951-JMC
Plaintiff,)	
)	
v.)	ORDER
)	
)	
)	
Ms. Enloe K. Burgess, Head Nurse of)	
Medical of Perry Correctional Inst.)	
)	
)	
Defendant.)	
)	

This matter is before the court for review of the Magistrate Judge’s Report and Recommendation (“Report”) filed on September 25, 2019. (ECF No. 11.) The Report addresses Plaintiff Hector Villafuerte’s suit under 42 U.S.C. § 1983 and recommends that the court dismiss this action without prejudice, in accordance with Fed. R. Civ. P. 41(b) for lack of prosecution. For the reasons stated herein, the court **ACCEPTS** the Report, and **DISMISSES** this action **WITHOUT PREJUDICE**.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Report sets forth the relevant facts and legal standards which this court incorporates herein without a full recitation. (ECF No. 11.) As brief background, on July 11, 2019, Plaintiff, proceeding *pro se*, filed his Complaint, alleging constitutional violations pursuant to 42 U.S.C. § 1983 and the Eighth Amendment to the Constitution of the United States. (ECF No. 1.) Specifically, in his Complaint, Plaintiff alleges that he underwent surgery in 2010 and “is having numerous medical problems with [his] left lung and heart and suffers every day.” (ECF No. 1-1 at 2.) Plaintiff further alleges that the institution provides medication in his food, but because he

“does not eat from the cafeteria, [he] has not been able to take the medication.” (*Id.*) In terms of relief, Plaintiff desires “medical treatment.” (ECF No. 1 at 6.)

By Order dated August 21, 2019, Plaintiff was given an opportunity to provide necessary information and paperwork to bring the case into proper form, but he has failed to respond to the court’s August 2019 order in any way. (ECF No. 11 at 2.) For these reasons, the Magistrate Judge ultimately recommended that the court dismiss the action. (ECF No. 11.) The Report is now ripe for review.

II. STANDARD OF REVIEW

The Magistrate Judge’s Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge only makes a recommendation to this court, and the recommendation has no presumptive weight. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The responsibility to make a final determination remains with the court. *Id.* at 271. As such, the court is charged with making *de novo* determinations of those portions of the Report and Recommendation to which specific objections are made. *See* 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). Thus, the court may accept, reject, or modify, in whole or in part, the Magistrate Judge’s recommendation or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

III. DISCUSSION

The parties were apprised of their opportunity to file objections to the Report on September 25, 2019. (ECF No. 11 at 3.) Objections to the Report were due by October 9, 2019. (ECF No. 11.) However, objections were due by October 14, 2019, if a party was served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (*Id.*) Neither party filed an objection to the Report. In the absence of timely objections to the Magistrate Judge’s Report, this court is not

required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F. 2d 198, 199 (4th Cir. 1983). Instead, the court must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F. 3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F. 2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F. 2d 91 (4th Cir. 1984). After a thorough and careful review of the record, the court finds the Magistrate Judge's Report provides an accurate summary of the facts and law in the instant case. (ECF No. 11.) Because neither party filed objections, the court adopts the Report herein. *Camby*, 718 F. 2d at 199.

IV. CONCLUSION

After a thorough review of the Report and the record in this case, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 11) and incorporates it herein. The court, therefore, **DISMISSES** this action **WITHOUT PREJUDICE**.

IT IS SO ORDERED.



United States District Judge

October 31, 2019
Columbia, South Carolina